Application No. 10/699,141
Amendment in Response to Non-Final
  Office Action dated July 1, 2008
Reply to Office Action of April 1, 2008

Docket No.: 03-8012

REMARKS

I.   Introductory Comments

Applicants thank the Examiner for the detailed review of the pending claims in the non-final Office Action mailed April 1, 2008. No claims have been cancelled. Claims 2, 4, 6-8, 11, 13, 15, 17-21, 24, 27, 28, 31, 32, and 34 have been non-substantively amended, with no intended change in scope or meaning. Therefore, claims 1-34 remain pending in the application. Claims 1, 22, 29, and 33 are independent claims.

In the Office Action, the Examiner rejected claims 1-34 under Section 103(a) as being unpatentable over the combination of the Examiner's Official Notice, and several non-patent references. Specifically, the Examiner rejected claims 1 and 8-13 under Section 103(a) as being unpatentable over the combination of the Examiner's Official Notice and Philip L. Roth & Philip Bobko, *A Research Agenda for Multi-Attribute Utility Analysis in Human Resource Management*, 7 Hum. Resource Mgmt. Rev. 3, 341-368 (1997) (hereinafter Roth). The Examiner also rejected claims 2, 3, 15-19, 22, 24, and 25-32 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Jeffrey R. Edwards & Mark E. Parry, *On the Use of Polynomial Regression as an alternative to Difference Scores in Organizational Research*, 36 Acad. of Mgmt. J. 6, 1577-1613 (Dec., 1993) (hereinafter Edwards). The Examiner rejected claims 4, 5, and 14 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Linda Trocine & Linda Malone, *Finding Important Independent Variables Through Screening Designs: A Comparison of Methods*, Proc. of the 2000 Winter Simulation Conf., 749-754 (2000) (hereinafter Trocine). The Examiner also rejected claims 6, 7, and 33 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Tom Jacobson, *Reaching New Heights*, 22 Credit Union Mgmt., Madison 6 (June 1999) (hereinafter Jacobson). The Examiner rejected claims 20 and 21 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Jacobson. The Examiner also rejected claim 23 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, Edwards, and Trocine. Lastly,

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the Examiner rejected claim 34 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, Jacobson, and Edwards.

In view of the following arguments, all claims are believed to be in condition for allowance. Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of dependent claims not explicitly addressed herein, in future papers.[1]

II.   Official Notice

The MPEP explicitly states that Official Notice should only be used in limited circumstances. Further, Official Notice should only be used if the Examiner can provide instant and unquestionable documentary support. In addition, the MPEP requires the Examiner to provide such support if the Official Notice is challenged. MPEP § 2144.03. For example, MPEP § 2144.03 clearly states that taking Official Notice to make a rejection should be used "[i]n limited circumstances" and "should be judiciously applied." More importantly, "Official Notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03. The Court of Customs and Patent Appeals (CCPA), predecessor to the Court of Appeals for the Federal Circuit, stated that notice of facts beyond the record must be "capable of such instant and unquestionable demonstration as to defy dispute." In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970). The MPEP offers additional guidance on when taking Official Notice is not appropriate:

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific

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1. As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

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knowledge of the prior art must always be supported by citation to some
reference work recognized as standard in the pertinent art. *In re Ahlert*, 424
F.2d at 1091 (CCPA 1979).

"If the examiner is relying on personal knowledge to support the finding of what is known in
the art, the examiner must provide an affidavit or declaration setting forth specific factual statements
and explanation to support the finding." MPEP § 2144.03, see 37 CFR 1.104(c)(2). The Federal
Circuit has held that general conclusions concerning what is "basic knowledge" or "common sense"
to one of ordinary skill in the art, without specific factual findings and some concrete evidence in
the record to support these findings, will not support an obviousness rejection. *In re Zurko*, 258
F.3d at 1386 (Fed. Cir. 2001).

In the Office Action, the Examiner took Official Notice in several instances, and used
Official Notice as a basis to form an obviousness rejection of every pending claim. The Examiner
failed to provide any documentary evidence to support even one instance of Official Notice, but
merely stated that certain recitations were "old and well known in the art." Office Action, page 4.
As the Federal Circuit stated in *Zurko*, general conclusions without specific factual findings and
some concrete evidence will not support an obviousness rejection. Therefore, the Examiner must
provide documentary evidence in the next Office Action, or withdraw the obviousness rejections of
every pending claim. Furthermore, any such documentary evidence must also comply with the rules
and laws of obviousness if the Examiner intends to maintain the obviousness rejections. For
example, the Examiner must show that any such documentary evidence can be properly combined
with the other cited references in order to maintain the stated obviousness rejections.

III. Obviousness Under Section 103(a)

Claims 1-34 were rejected under Section 103(a) as being allegedly unpatentable over the
combination of the Examiner's Official Notice and several non-patent references. However, the
Examiner has failed to meet the burden of stating a *prima facie* case of obviousness for claims 1-34.
Section 2143.01 of the MPEP states:

> The test for obviousness is what the combined teachings of the
> references would have suggested to one of ordinary skill in the art, and
> all teachings in the prior art must be considered to the extent that they

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>are in analogous arts. Where the teachings of two or more prior art
>references conflict, the examiner must weigh the power of each
>reference to suggest solutions to one of ordinary skill in the art,
>considering the degree to which one reference might accurately
>discredit another.

In re Young, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991)(Emphasis added). In *KSR*

International Co. v. Teleflex, Inc., 550 U.S. ___, (April 30, 2007), the Supreme Court stated that

"[t]he combination of familiar elements according to known methods is likely to be obvious when it

does no more than yield predictable results." *Id.* at 12. Additionally the Court stated that "it can be

important to identify a reason that would have prompted a person of ordinary skill in the relevant

field to combine the elements in the way the claimed new invention does." *Id.* at 15. The Court

further explained that:

>What matters is the objective reach of the claim. If the claim extends
>to what is obvious, it is invalid under §103. One of the ways in which
>a patent's subject matter can be proved obvious is by noting that there
>existed at the time of invention a known problem for which there was
>an obvious solution encompassed by the patent's claims.

Id. at 16. Accordingly, the Court made clear that "a patent composed of several elements is not

proved obvious merely by demonstrating that each of its elements was, independently, known and in

the prior art." *Id.* at 14.

    In summary, *KSR* does not disturb the well-settled proposition that a prior art reference must

be considered in its entirety, i.e., as a <u>whole</u>, including portions that would teach away from the

claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303

(Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); MPEP § 2141.02. Further, the USPTO has

published Section 103 Examination Guidelines providing seven rationales for claim rejections as

examples of applications of *KSR* under Section 103, consistent with this requirement of *Gore. See*

Section 103 Examination Guidelines, 72 F.R. 57526 (October 10, 2007).

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IV. Claims 1-34 are Patentable Over the Cited References

A. Independent Claim 1

Claim 1 reads:

> A method of determining comparable performance measures for employees having differing task assignments, comprising:
>> generating sets of task scores based on a selected model design of said task assignments;
>> performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores;
>> analyzing said productivity scores to determine productivity parameters; and
>> applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees.

The Examiner rejected claim 1 under Section 103(a) based on the combination of the Examiner's Official Notice and Roth. As discussed above, the Examiner must provide documentary evidence to support the Official Notice, or withdraw the rejection. As discussed in detail below, the Examiner's reliance on Roth is misplaced, as Roth is not directed to the recitations of claim 1.

Roth is directed to a method of analyzing a potential human resource management decision, which Roth describes as a method "to help guide decision making and estimate the value of Human Resource Management (HRM) interventions." *Roth*, 341. For example, Roth notes that "[m]ost current applications of utility analysis have used the Brogden-Cronbach-Gleser (BCG) utility model to estimate the usefulness of an HRM intervention to an organization." *Id.* at 342. Notably, Roth explains that the BCG model focuses on "the number of individuals affected by an intervention, the duration of the effect of the intervention, the standard deviation of the value of job performance in dollars, and the effect size of the intervention." *Id.* The purpose of the BCG model is "to estimate the dollar value of [a human resource management] intervention." *Id.* By comparison, Roth states that "[multi-attribute utility analysis] may be defined as a set of procedures to guide decision making that integrate[s] multiple outcomes from a course of action into a single number that

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represents the usefulness of that course of action." *Id.* Clearly, the teachings of Roth are not directed to the recitations of claim 1.

1. Roth Fails to Teach or Suggest "generating sets of task scores based on a selected model design of said task assignments"

The Examiner alleged that Roth teaches "generating sets of task scores based on a selected model design of said task assignments" in paragraphs 1 and 2 on page 352, in a section entitled "Constructing Measures." Office Action, page 3. Specifically, the Examiner alleged that Roth discloses that "sets of task scores are generated based on the Multi-Attribute Utility (MAU) approach to evaluating performance." However, Roth fails to mention "task scores" or "task assignments" in paragraphs 1 and 2 on page 352, and clearly fails to teach or suggest "generating sets of task scores based on a selected model design of said task assignments."

At most, Roth teaches that "[t]he fundamental issue in constructing measures is to find some method for assigning numbers to particular levels of the attributes." *Roth*, 352. As Roth notes earlier, "[a]n attribute is a variable or set of variables <u>that is affected by the decision and is of concern to decision makers</u>." *Id.* at 349 (emphasis added). Clearly, Roth's disclosure relating to "attributes" is unrelated to "sets of task scores" and to "a selected model design of task assignments," as recited in claim 1.

2. Roth Fails to Teach or Suggest "performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores"

The Examiner alleged that Roth teaches "performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores" in paragraphs 2 and 3 on page 343. Office Action, page 3. This section is entitled "The Need for Multi-Attribute Utility," and includes a hypothetical example involving a single attribute utility analysis. Specifically, the Examiner alleged that in this section Roth teaches that "the evaluations of the employees result in sets of task scores for the various attributes (e.g. interviews and cognitive ability test)." However, the disclosure in this section is completely unrelated to this recitation of claim 1.

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In this section, Roth analyzes a hypothetical potential decision involving a process to interview job candidates using a single attribute utility model, as opposed to using the multi-attribute utility model, which is the focus of the remainder of the reference, and relied upon by the Examiner to reject most of the recitations of claim 1. Specifically, this discussion is unrelated to the disclosure on page 352 that the Examiner previously relied upon. As discussed below, Roth fails to teach or suggest "performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores" in this section.

In paragraphs 2 and 3, Roth begins to analyze a hypothetical decision to help a human resource management (HRM) department decide whether or not to change their interviewing methods. Specifically, Roth states that "an HRM department may be interested in hiring 25 district sales managers." *Roth*, 343. The HRM department may attempt to decide to interview the managers "using either a cognitive ability test or a structured behavioral interview to replace their unstructured interview." *Id.* Roth continues on to analyze the hypothetical decision using the BCG utility model, which is a single attribute utility model and not a multi-attribute utility model. Nowhere in the disclosure cited by the Examiner does Roth teach or suggest "performing a plurality of evaluations of said sets of task scores," nor does Roth even mention "assigning productivity scores," as recited in claim 1.

3. Roth Fails to Teach or Suggest "analyzing said productivity scores to determine productivity parameters"

The Examiner alleged that Roth teaches "analyzing said productivity scores to determine productivity parameters" on page 353 in section 4, last paragraph, in a section entitled "Estimating Weights and Utility Functions." Office Action, page 3. Specifically, the Examiner alleged that Roth discloses that "the combination of the attributes into a single score requires analyzing the scores to determine the weights (i.e. productivity parameters) for how they are combined." The Examiner went on to allege that Roth teaches that "these utility functions represent the scored attributes that are weighted and combined for a single score." Office Action, page 3. However, Roth fails to mention "task scores" or "task assignments" in paragraphs 1 and 2 on page 352, and clearly fails to teach or suggest "generating sets of task scores based on a selected model design of

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said task assignments." However, not only does this section of Roth fail to teach or suggest this recitation of claim 1, but illustrates the Examiner's inconsistent arguments. More specifically, the Examiner previously asserted that Roth teaches "productivity scores" in paragraphs 2 and 3 on page 343. But the disclosure on page 353, last paragraph, is completely unrelated to the disclosure in page 343, but is relied upon by the Examiner to once again teach "analyzing said productivity scores."

At most, Roth teaches that "[t]he key challenge in this step is to develop a series of utility functions that relate the measures generated in step 3 [Constructing Measures] to a common metric such as effectiveness points." *Roth*, 353. "One function is needed for each indicator so that all the indicator values can be combined into a single composite number expressing the benefits of each decision output." *Id.* Roth makes no mention of "analyzing" anything, nor does Roth mention "productivity scores" or "productivity parameters," as recited in claim 1.

Clearly, Roth fails to teach or suggest "analyzing said productivity scores to determine productivity parameters." Furthermore, this discussion relating to "Estimating Weights and Utility Functions" is completely unrelated to Roth's previous hypothetical analysis using a single attribute utility model in paragraphs 2 and 3 on page 343, which the Examiner claimed teaches "performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores."

4. Roth Fails to Teach or Suggest "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees"

The Examiner alleged that Roth teaches "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees" in the last paragraph of page 343, in the section discussing the hypothetical analysis. Specifically, the Examiner stated that "the various score [sic] generated in an MAU analysis are combined such that the result of the MAU analysis results in a single score." Office Action, page 4. However, Roth again fails to mention "productivity parameters," "employee task scores," or "performance

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measures," and clearly fails to teach or suggest "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees."

In the last paragraph of page 343, Roth discusses the basics of how an MAU approach differs from the single attribute utility analysis. At most, Roth teaches that an "MAU approach requires combining the various attributes important to decision makers," and that "[t]his can be accomplished by developing a set of functions that weight each attribute and combining the attributes into a single metric." *Roth*, 343. As previously discussed, Roth teaches that "[a]n attribute is a variable or set of variables <u>that is affected by the decision and is of concern to decision makers</u>." *Id.* at 349 (emphasis added). However, an attribute, as disclosed by Roth, is not related to a "productivity parameter," a "task score," or a "performance measure," as recited in claim 1. Therefore, Roth clearly fails to teach or suggest "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees."

5. The Examiner's Reliance on Official Notice is Improper

The Examiner admitted that "Roth does not teach where the evaluation method is for evaluating different employees who are performing different tasks." Office Action, page 4. The Examiner then stated the following:

> However, Official Notice is taken that it is old and well known in the art for individuals in an organization to perform different tasks. Since Roth teaches using different utility functions that are combined to represent different factors as an input into productivity, it would have been obvious . . . to modify those teachings to include applying the utility function idea to the different tasks performed by different employees, because it would provide a way to provide a comparative measure of different employee's contributions to a firm's productivity, thus improving the ability of the firm to value different employees.

Office Action, page 4. As previously discussed, the Examiner's reliance on Official Notice is improper, and Applicants do not acquiesce to the Examiner's use of Official Notice. Therefore, the Examiner must provide documentary evidence in the next Office Action, or withdraw the obviousness rejections of every pending claim.

Furthermore, Roth does not teach "using different utility functions . . . to represent different factors as <u>an input into productivity</u>," as the Examiner asserts. As previously discussed, Roth states

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that "[multi-attribute utility analysis] may be defined as a set of procedures to guide decision making that integrate[s] multiple outcomes from a course of action into a single number that represents the usefulness of that course of action." *Id.* Notably, Roth is concerned with the effect that a human resource management (HRM) decision will have on an organization. Clearly, Roth is not directed to the recitations of claim 1.

For at least the foregoing reasons, independent claim 1 is patentable over Roth and the Examiner's Official Notice. Thus, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 1.

B. Claims Dependent on Claim 1

Claims 2-21 are patentable since they depend from claim 1, the patentability of which has been discussed above. However, the dependent claims are separately patentable. Merely by way of example, discussions of specific dependent claims follow.

1. Dependent Claim 2

Claim 2 has been amended, with no intended change in scope. Claim 2 depends from claim 1, and now recites "[t]he method of claim 1, wherein analyzing said productivity scores comprises applying linear regression techniques to said productivity scores." The Examiner admitted that "Roth does not teach using linear regression techniques to determine the weights for the combination of the individual utility functions." The Examiner then cited Edwards, page 1579, last paragraph, to compensate for the deficiencies of Roth. Office Action, page 8. Further, the Examiner stated that Roth "teaches that there are separate functions, i.e. utility functions, that are weighted to be combined such that a score results." The Examiner then alleged that "[i]t would have been obvious . . . to modify the teachings of Roth to include the determination of coefficient values as provided by the linear regression techniques of Edwards, because it would improve the determination of the coefficients of the utility functions to be combined by using the well known and reliable technique of linear regression." Office Action, page 9.

However, Roth does not mention using "coefficients of the utility functions," as the Examiner suggests, and Roth clearly fails to mention a need for any additional mathematical

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analysis technique, let alone linear regression. Notably, Roth states that the "use of a MAU approach requires combining the various attributes . . . [by] developing a set of functions that weight each attribute and combining the attributes into a single metric." *Roth*, 343. Once combined into a single metric, there is no need to perform linear regression, and there is no reason to combine the teachings of Edwards with Roth.

Thus, for at least the foregoing reasons, dependent claim 2 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of dependent claim 2.

2. Dependent Claim 8

Claim 8 has been amended, with no intended change in scope. Claim 8 depends from claim 1, and now recites "[t]he method of claim 1, wherein generating sets of task scores comprises adding a number of recorded task scores to said sets of task scores." The Examiner alleged that Roth teaches this recitation in the last paragraph of page 352, in a section entitled "Groups Literature." Office Action, page 5. Specifically, the Examiner alleged that "the development of various scores by group members suggests the development of more than one set of scores, i.e. thus adding a number of recorded scores to a base set of scores." Office Action, page 5 (emphasis added). However, Roth says nothing at all about "sets of task scores," let alone "adding a number of recorded task scores to said sets of task scores," as recited in claim 8.

In this section, Roth discusses establishing groups of decision makers using different methods, and using these groups to estimate uncertain quantities when estimating maximum and minimum values for measures. Such groups are comprised of "decision makers [who] define measures of attributes." *Roth*, 352. For example, Roth notes that "many types of groups are better than staticized groups . . . [because] many types of groups entertain a wider range of possible values than do staticized groups." *Roth*, 352. Roth also notes certain issues regarding groups. For example, "[i]nteracting groups suffer from problems such as dominance of discussion by certain individuals . . . , distracting social interactions . . . , and 'groupthink.'" However, Roth makes no mention of "scores by group members," as alleged by the Examiner. Further, Roth clearly fails to

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teach or suggest "generating sets of task scores [by] adding a number of recorded task scores to said sets of task scores," as recited in dependent claim 8. Thus, for at least the foregoing reasons, dependent claim 8 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of dependent claim 8.

3. Dependent Claim 9

Claim 9 depends from claim 8, and recites "[t]he method of claim 8, wherein said sets of task scores are scaled to represent performance by employees over a common work period, with a fixed number of hours worked." The Examiner alleged that Roth teaches this recitation in paragraphs 3 and 4 of page 343, which discussed the hypothetical example using a single-attribute utility analysis. Specifically, the Examiner alleged that Roth teaches that "the MAU approach includes combining attributes based on factors (i.e. they are scaled). Since the particular tasks are an interview and a test, this suggests work performed over a common period." Office Action, page 5. However, as previously discussed, this section says nothing at all about "sets of task scores," nor does Roth even mention "performance by employees over a common work period, with a fixed number of hours worked."

At most, Roth analyzes a hypothetical decision to change the type of interview conducted for job candidates, and the relative costs and factors associated with making such a decision. Roth does not mention assigning a score to an interview, but focuses on whether or not to change the type of interview conducted. Nowhere in this section does Roth teach or suggest that "sets of task scores are scaled to represent performance by employees over a common work period." Roth doesn't even mention setting a fixed time period for the proposed interviews, or rating the employees conducting the interviews. Rather, Roth merely focuses on certain factors that decision makers must consider when deciding whether to change the entire interview system.

The Examiner admitted that "Roth does not teach . . . a fixed number of hours worked," but took "Official Notice . . . that using such a measure is known in the art to provide normalization, i.e. a standardization of what time workers work such that a comparison can be made between the amount of work achieved." Office Action, page 5. As previously discussed, the Examiner's

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reliance on Official Notice is inappropriate without providing some documentary evidence. Further, the Official Notice is completely unrelated to the teachings of Roth. Again, Roth is directed to a decision concerning how to conduct interviews, and not making any comparison between the amount of time worked and the amount of work achieved. Roth makes no mention of comparing any results of the interviews, monitoring the amount of time per interview, or assigning any metric to judge the "amount of work achieved" during an interview. Thus, the teaching of Roth and the Examiner's Official Notice are incapable of combination. Further, the Examiner's Official Notice and the teachings of Roth, taken together, still fail to teach or suggest that "said sets of task scores are scaled to represent performance by employees over a common work period, with a fixed number of hours worked," as recited in dependent claim 9.

Thus, for at least the foregoing reasons, dependent claim 9 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of dependent claim 9.

4. Dependent Claim 11

Claim 11 has been amended for clarity purposes, with no intended change in scope. Claim 11 depends from claim 10, and recites:

> The method of claim 10, further comprising:
> assigning evaluator parameters to each of said plurality of evaluators;
> comparing said plurality of productivity scores assigned by each of said evaluators using said evaluator parameters in analyzing said productivity scores to determine anomalous ones of said plurality of evaluations;
> removing said anomalous ones of said plurality of evaluations; and
> returning to analyzing said productivity scores.

The Examiner admitted that "Roth does not teach where the scores are compared to determine anomalous ones of said plurality of evaluations; removing said anomalous ones of said plurality of evaluations; and returning to analyzing said productivity scores." Office Action, page 6. The Examiner then took Official Notice "that it is old and well known in the art to determine and

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remove anomalous data points for the purpose of improving accuracy of results in an analysis." The

Examiner then alleged that "[i]t would have been obvious . . . to modify the teachings of Roth to

include determine and removing anomalous scores, because it would improve the accuracy of the

overall MAU analysis." Office Action, page 7. As previously discussed, the Examiner must

provide documentary evidence in the next Office Action to support each instance of Official Notice,

or withdraw the obviousness rejections of every pending claim.

Thus, for at least the foregoing reasons, dependent claim 11 is patentable over the cited

references. Applicants respectfully request the Examiner to withdraw the rejection of dependent

claim 11.

C. Independent Claim 22

Claim 22 reads:

> A method of determining productivity parameters for
> evaluating employee performance for employees having differing task
> assignments, comprising:
> generating sets of task scores based on a selected model design
> of said task assignments;
> performing a plurality of evaluations of said sets of task scores,
> said evaluations assigning productivity scores to said sets of task
> scores;
> applying linear regression techniques to said productivity
> scores to obtain said productivity parameters using an expression
> having a form
>
> $$PS_t(F_{t1}, F_{t2}, ..., F_{tK}) = \alpha_t + \sum_{k=1}^{K} \beta_{tk} F_{tk} + \sum_{k=1}^{K} \sum_{k'=1}^{K} \gamma_{tkk'} F_{tk} F_{tk'} \text{ , where}$$
>
> F_{tk} is a measured value for a k task of assignment t,
> PS_t is a productivity score for said assignment t as a function of said measured
> values, $F_{t1}, F_{t2}, \ldots F_{tK}$, and
> α_t, β_{tk} and $\gamma_{tkK'}$ are said productivity parameters.

The Examiner rejected claim 22 under Section 103(a) based on the combination of the

Examiner's Official Notice, Roth, and Edwards. More specifically, the Examiner alleged that

"[c]laim 22 recites similar limitations to those addressed by the rejection of Claims 2 and 3 . . . and

are therefore rejected under the same rationale." Office Action, page 11. However, Claim 22 is not

identical to claims 2 and 3. Furthermore, as discussed in detail above, the Examiner's reliance on

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Official Notice is inappropriate, and the Examiner must provide documentary evidence to support the Official Notice, or withdraw the rejection. Also, as discussed in detail above regarding claims 1 and 2, Roth fails to teach or suggest multiple recitations found in claim 22. Thus, for at least the reasons setting forth the patentability of claims 1 and 2, independent claim 22 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of independent claim 22.

D. Independent Claim 29

Claim 29 reads:

> A computer-readable medium containing instructions for controlling a computer system to determine comparable performance measures for employees having differing task assignments, said instructions controlling said computer system to:
> generate sets of task scores based on a selected model design of said task assignments;
> obtain a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores;
> apply linear regression techniques to said productivity scores to obtain said productivity parameters using an expression having a form
>
> $$PS_t(F_{t1}, F_{t2}, ..., F_{tK}) = \alpha_t + \sum_{k=1}^{K} \beta_{tk} F_{tk} + \sum_{k=1}^{K} \sum_{k'=1}^{K} \gamma_{tkk'} F_{tk} F_{tk'} \text{ , where}$$
>
> F_{tk} is a measured value for a k task of assignment t,
> PS_t is a productivity score for said assignment t as a function of said measured values, F_{t1}, F_{t2}, ... F_{tK}, and
> α_t, β_{tk} and $\gamma_{tkK'}$ are said productivity parameters; and
> apply said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees.

The Examiner rejected claim 29 under Section 103(a) based on the combination of the Examiner's Official Notice, Roth, and Edwards. More specifically, the Examiner alleged that "[c]laim 29 recites similar limitations to those addressed by the rejection of Claim 22 above by Roth, and is therefore rejected under the same rationale." Office Action, page 11. The Examiner admitted that

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> Roth and Edwards do not explicitly teach performing his [sic]
> method using computer readable medium containing instructions for
> causing a computer system to perform method steps, however Official
> Notice is taken that performing the method steps taught by Roth and
> Edwards using computer software running on a computer system is old
> and well known in the art.

Office Action, pages 11-12. However, claim 29 is not identical to claim 22. Furthermore, as discussed in detail above, the Examiner's reliance on Official Notice is inappropriate, and the Examiner must provide documentary evidence to support each instance of Official Notice, or withdraw the rejection. Also, as discussed in detail above regarding claims 1 and 2, Roth fails to teach or suggest multiple recitations found in claim 29. Thus, for at least the reasons setting forth the patentability of claims 1 and 2, independent claim 29 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of independent claim 29.

E. Independent Claim 33

Claim 33 reads:

> A computer implemented application on computer-readable
> medium, said application comprising instructions to compare
> employee performance for employees having differing task
> assignments, said application comparing employee performance by:
>   generating sets of task scores based on a selected model design
> of said task assignments;
>   obtaining a plurality of evaluations of said sets of task scores,
> said evaluations assigning productivity scores to said sets of task
> scores;
>   analyzing said productivity scores to determine productivity
> parameters;
>   applying said productivity parameters to employee task scores
> for said employees to obtain performance measures for said
> employees;
>   calculating statistical measures for said performance measures
> over a time period; and
>   identifying employees having performance measures outside a
> range of said statistical measures.

The Examiner rejected claim 33 under Section 103(a) based on the combination of the Examiner's Official Notice, Roth, and Jacobson. More specifically, the Examiner alleged that

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"[c]laim 33 recites similar limitations to those addressed by the rejection of Claim 6 above by Roth and Jacobson, and is therefore rejected under the same rationale." Office Action, page 16. However, claim 33 is not identical to claim 6. Furthermore, as discussed in detail above, the Examiner's reliance on Official Notice is inappropriate, and the Examiner must provide documentary evidence to support each instance of Official Notice, or withdraw the rejection. Also, as discussed in detail above regarding claims 1 and 2, Roth fails to teach or suggest multiple recitations found in claim 33. Thus, for at least the reasons setting forth the patentability of claims 1 and 2, independent claim 33 is patentable over the cited references. Applicants respectfully request the Examiner to withdraw the rejection of independent claim 33.

F. Claims Dependent on Claims 22, 29, and 33

Claims 23 through 28 depend from claim 22, claims 30-32 depend from claim 29, and claim 34 depends from claim 33. Thus, claims 23-28, 30-32, and 34 are patentable over the cited references since they depend from a patentable independent claim. Applicants respectfully request the Examiner to withdraw the rejections of claims 23-28, 30-32, and 34.

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CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested, and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013 under order number 65632-0559. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: July 1, 2008   Respectfully submitted,

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